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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,461	01/23/2004	Vitaly Shchukin	QIL-1CDV	6648
20808	7590	12/13/2005	EXAMINER	
BROWN & MICHAELS, PC 400 M & T BANK BUILDING 118 NORTH TIOGA ST ITHACA, NY 14850			MALDONADO, JULIO J	
			ART UNIT	PAPER NUMBER
			2823	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,461

Applicant(s)

SHCHUKIN ET AL.

Examiner

Julio J. Maldonado

Art Unit

2823

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 30-36 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-29 and 37-42 is/are allowed.
- 6) ☒ Claim(s) 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20050818, 20050823.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Specie I, i.e., claims 1-29 and 37-42, in the reply filed on 09/23/2005 is acknowledged. The traversal is on the ground(s) that "...Even if some of the inventions would be classified separately, a though search of the prior art for any one of the inventions would include the classes and subclasses of the other inventions...". This is not found persuasive because the materials used in the inventions required in species II-V would not require the specifications required in the first specie and vice versa.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 43 is rejected under 35 U.S.C. 102(b) as being anticipated by Lo (U.S. 6,184,144 B1).

In reference to claim 43, Lo (Figs.1A-1F) teaches a semiconductor device including a substrate (10); a plastically relaxed layer (20) grown on top of the substrate (10) wherein a thickness of the plastically relaxed layer (20) exceeds a critical thickness for plastic strain relaxation; and a defect-free layer (24) grown on top of the plastically relaxed layer (20) (column 3, line 27 – column 5, line 26).

Art Unit: 2823

4. Claim 43 is rejected under 35 U.S.C. 102(b) as being anticipated by Chisholm et al. (U.S. 5,221,367).

In reference to claim 43, Chisholm et al. (Figs.3-4) teach a semiconductor device including a substrate (22); a plastically relaxed layer (26) grown on top of the substrate (22) wherein a thickness of the plastically relaxed layer (26) exceeds a critical thickness for plastic strain relaxation; and a defect-free layer (24) grown on top of the plastically relaxed layer (26) (column 5, line 12 – column 7, line 19).

Allowable Subject Matter

5. Claims 1-29 and 37-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach cap layer selectively deposited on defect-free surface regions.

Conclusion

7. Applicants are encouraged, where appropriate, to check Patent Application Information Retrieval (PAIR) (<http://portal.uspto.gov/external/portal/pair>) which provides applicants direct secure access to their own patent application status information, as well as to general patent information publicly available.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Julio J. Maldonado whose telephone number is (571) 272-1864. The examiner can normally be reached on Monday through Friday.

Art Unit: 2823

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Smith, can be reached on (571) 272-1907. The fax number for this group is 571-273-8300. Updates can be found at <http://www.uspto.gov/web/info/2800.htm>.

Julio J. Maldonado
Patent Examiner
Art Unit 2823

Julio J. Maldonado
December 6, 2005


George Fourson
Primary Examiner